

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA**

**ANDREW R. PERRONG**

**1657 The Fairway #131 Jenkintown, PA 19046**

**Plaintiff,**  
**vs.**

## Civil Action

**No. 17-3366**

**ANTONIO CLYDE SMITH**

2736 SUDBURY TRCE

**NORCROSS, GA 30071,**

*Et. Al.*

**Defendants.**

## Jury Trial Demanded

**MOTION FOR DEFAULT JUDGEMENT PER RULE 55(b)(2)**

**WITH INCORPORATED MOTION FOR ASSESSMENT OF DAMAGES**

Comes now Andrew Perrong and requests the Court, pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure, for entry of a judgment by default against the defendant LIFE MARKETING GROUP. In support of this request, Plaintiff relies on the attached affidavit.

In addition, Plaintiff relies upon the record in this case as well as the affidavit made in the denied motion for Clerk's Default (Doc. 19, 20, 23). Plaintiff notes that defendant LIFE MARKETING GROUP had default entered against it on September 18, 2017 (Doc. 19). Defendant LIFE MARKETING GROUP has had over two months since the entry of default within which to respond or to overturn the entry of default, and has not done so, despite re-service in good faith. Subsequently, LIFE MARKETING GROUP was Re-Served by Process Server on October 5 (see attached document), and answer was due on October 26, 2017. Per October 31 order of Judge Savage, LIFE MARKETING GROUP has not yet filed an answer to the complaint (Doc. 34). Defendant LIFE MARKETING GROUP is therefore in default.

As noted in the attached affidavit in support, Plaintiff's motion for default judgment is for a sum certain of \$117,000 plus costs, fees, and interest as provided by law. In the event that the court finds that the judgment is not for a sum certain, Plaintiff motions the court to assess damages on its own, *sua sponte*, holding a hearing if necessary to conduct an accounting of damages the court deems just and proper to assess.

Additionally, Plaintiff notes that Defendant LIFE MARKETING GROUP still has not appeared, pled, or otherwise taken any action to defend this case, despite two occasions of service, one by Certified Mail, and another by Personal Service, after default had been entered upon the docket.

**Dated: 11/28/2017**



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Andrew Perrong  
*Plaintiff Pro-Se*  
1657 The Fairway #131  
Jenkintown, PA 19046  
Phone: 215-791-6957  
Facsimile: 888-329-0305  
andyperrong@gmail.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

## CLERK OF COURT

Date: 7/31/2017

s/Robert D. Fehrle  
Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. 17-3366

## PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for (name of individual and title, if any)

was received by me on (date)

10/4/2017

Antonio Clyde Smith  
Owner of "Life Marketing Group"

☐ I personally served the summons on the individual at (place)

on (date) \_\_\_\_\_ ; or

☐ I left the summons at the individual's residence or usual place of abode with (name)

\_\_\_\_\_, a person of suitable age and discretion who resides there,

on (date) \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☒ I served the summons on (name of individual)Antonio Clyde Smith, who is

designated by law to accept service of process on behalf of (name of organization)

Life Marketing Groupon (date) 10/5/2017, or☐ I returned the summons unexecuted because \_\_\_\_\_ ; or☐ Other (specify): \_\_\_\_\_

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date:

10/8/2017

Server's signature

Christian Seklecki (Process Server)

Printed name and title

10800 Alpharetta Hwy 208-619

Server's address

Roswell, GA 30076

Additional information regarding attempted service, etc:

- service occurred approximately at 7:27pm.
- After service, Antonio Clyde Smith told me "This isn't the last you've seen of me." I asked him if he was threatening me. He smiled, nodded, and said, "I'm coming for you."



the court, but was not filed, presumably because Defendant LIFE MARKETING GROUP had already been in default and properly served.

6. The claim of the plaintiff is for the sum of \$117,000 plus interest from the date of judgment as provided by law, together with the costs of this action. The damages requested are statutory in nature and capable of being calculated as follows:
  - a. Twenty-six “robotexts” in violation of 47 U.S.C. § 227(b)(1)(A), which carries a minimum statutory penalty of \$500 per text pursuant to 47 U.S.C. § 227(b)(3)(B), which are trebled pursuant to 47 U.S.C. § 227(b)(3).
  - b. Twenty-six “sales texts” to a number on the National Do Not Call registry in violation of 47 U.S.C. § 227(c)(3)(F), and 47 C.F.R. 64.1200(c)(2), which carries a minimum statutory penalty of \$500 per text pursuant to 47 U.S.C. § 227(c)(5)(B), which are trebled pursuant to 47 U.S.C. § 227(c)(5).
  - c. Twenty-six instances of “lack of opt out mechanism” in violation of 47 CFR 64.1200 (b)(3), which carries a minimum statutory penalty of \$500 per text pursuant to 47 U.S.C. § 227(c)(5)(B), which are trebled pursuant to 47 U.S.C. § 227(c)(5).
  - d. Damages are thus calculated at \$117,000 total as such: \$39,000 for count (a), \$39,000 for count (b), and \$39,000 for count (c).
  - e. Such a calculation of damages is consistent to *Lary v. Trinity Physician Fin. & Ins. Servs.*, 780 F.3d 1101, 1106 (11th Cir. 2015), which held that “In plain terms, the statute allows a person to recover ‘\$500 in damages for each

violation of this subsection.' Id. § 227(b)(3). Section 227(b)(1) has no language limiting the recovery to \$500 per "call" or "fax."

7. For the foregoing reasons, Plaintiff moves the Court to enter judgement against defendant LIFE MARKETING GROUP in the amount of \$117,000, plus interest and costs, pursuant to Federal Rules of Civil Procedure Rule 55(b)(1), since the judgement is for a certain sum.
8. In the event the Court finds that the judgment is not for a certain sum, Plaintiff moves the court to assess damages *sua sponte*, holding a hearing if necessary, and granting Plaintiff a default judgment in the amount the court deems just and proper to assess.

**FURTHER AFFIANT SAYETH NAUGHT**

Commonwealth of Pennsylvania, County of

Bucks

Before me, the undersigned notary public, this day appeared

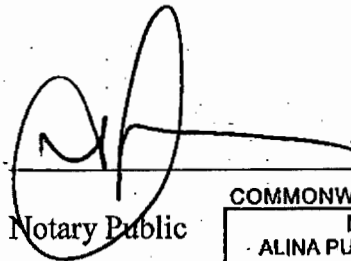
Andrew Perrong

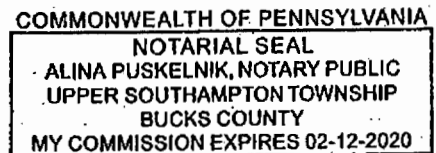
to me known, who being duly sworn according to law, deposes the above.

Subscribed and sworn to before me

this 28<sup>th</sup> day of November,

2017.

  
Notary Public





Andrew Perrong  
Plaintiff Pro-Se  
1657 The Fairway #131  
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Jury Trial Demanded

**PROPOSED ORDER OF COURT'S ASSESSMENT OF DAMAGES**  
**AND OF DEFAULT JUDGEMENT PER RULE 55(b)(2)**

The defendant, LIFE MARKETING GROUP, having failed to plead or otherwise defend in this action, and default having been entered; upon application of plaintiff and after assessing, accounting, and determination of amount of damages; finding that defendant defaulted for failure to appear pursuant to Rule 55(a) of the Federal Rules of Civil Procedure; it is hereby

ORDERED, ADJUDGED, and DECREED that plaintiff ANDREW R. PERRONG recover from the defendant, LIFE MARKETING GROUP, the sum of \$\_\_\_\_\_ plus costs and interest according to law from the date of this judgment until the entire amount is paid, plus (any other relief the court deems just and proper):

AND FOR WHICH SUM LET EXECUTION ISSUE.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. Timothy J. Savage, J.